No. 92-1436

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

TEAMSTERS PENSION TRUST FUND OF PHILADELPHIA AND VICINITY, CHARLES J. SCHAFFER, JR.,
Petitioners,

v.

FUQUA INDUSTRIES, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF AMICUS CURIAE OF THE PENSION BENEFIT GUARANTY CORPORATION IN SUPPORT OF RESPONDENT

CAROL CONNOR FLOWE *
General Counsel
TERRENCE M. DENEEN
Associate General Counsel
JEFFREY B. COHEN
Deputy General Counsel
PAULA J. CONNELLY
Senior Counsel

PENSION BENEFIT GUARANTY CORPORATION
2020 K Street, N.W.
Washington, D.C. 20006
(202) 778-8820

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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BRIEF AMICUS CURIAE OF THE PENSION BENEFIT GUARANTY CORPORATION IN SUPPORT OF RESPONDENT

INTEREST OF THE AMICUS CURIAE

The Pension Benefit Guaranty Corporation ("PBGC") is the federal agency charged by Congress with administering and enforcing Title IV of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1301-1461 ("ERISA"), including the provisions of the Multiemployer Pension Plan Amendments Act of 1980, Pub.

L. No. 96-364, 94 Stat. 1208 (1980) ("MPPAA").[1] As part of its insurance program, PBGC guarantees the payment of certain pension benefits to participants in insolvent multiemployer pension plans. 29 U.S.C. §§ 1361, 1431. The provisions of MPPAA, including the withdrawal liability provisions involved in this case, are critical to maintaining the financial stability of multiemployer plans and the PBGC insurance system.

PBGC has argued in defense of the constitutionality of MPPAA's imposition of withdrawal liability upon employers that withdraw from multiemployer pension plans. *See Connolly v. PBGC*, 475 U.S. 211 (1986); *PBGC v. R.A. Gray & Co.*, 467 U.S. 717 (1984). PBGC also has defended the constitutionality of the statutory presumption of correctness that MPPAA accords to certain determinations regarding withdrawal liability. *See Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, No. 91-904 (U.S. argued Dec. 1, 1992); *PBGC v. Yahn & McDonnell, Inc.*, 481 U.S. 735 (1987). However, in keeping with this Court's teachings, PBGC consistently has urged courts not to address constitutional issues where their resolution is unnecessary to the disposition of a case. *See Robbins v. Lady Baltimore Foods, Inc.*, 868 F.2d 258, 262 (7th Cir. 1989); *Transport Motor Express, Inc. v. Central States, Southeast and Southwest Areas Pension Fund*, 724 F.2d 575, 577 (7th Cir. 1983).

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[1] PBGC is a wholly-owned federal government corporation whose Board of Directors is composed of the Secretaries of Labor, Commerce and Treasury. PBGC has independent litigating authority, 29 U.S.C. § 1302(b)(1), and appears in this Court through its own counsel. Sup. Ct. R. 37.5.

In this case, the Court's examination of the constitutional issue the Petitioners identify would not change the outcome reached below, and is therefore unnecessary and unwarranted. Moreover, the Court's valuable resources need not be spent reviewing the Petitioners' wholly unsupported challenges to the factual conclusions reached by an independent arbitrator and upheld by two federal courts. Accordingly, PBGC submits this brief *amicus curiae* in opposition to the Petition.

SUMMARY OF ARGUMENT

The Court should decline to review the decision below. Although the Petitioners identify a constitutional issue, resolution of that issue is not necessary to the disposition of this case, and in fact, would have no impact on its outcome. Equally important, the case-specific arbitral conclusions the Petitioners challenge do not present important questions of federal law that warrant the Court's attention. In short, this case presents no basis for the Court to disregard the longstanding boundaries that guide its selection of cases for review.

STATEMENT OF THE CASE

This case arose when the Petitioner pension fund assessed withdrawal liability against the Respondent company under Title IV of ERISA, as amended by MPPAA. Under MPPAA, an employer that "withdraws" from a multiemployer pension plan becomes liable for its proportionate share of the plan's underfunding. 29 U.S.C. §§ 1381-83. The plan assesses this liability, and in doing so, is to disregard any transaction whose "principal purpose" is to "evade or avoid" withdrawal liability. 29 U.S.C. § 1392(c).

Alleging that such a transaction took place in this case, the Teamsters Pension Trust Fund of Philadelphia and Vicinity ("the Fund") assessed liability of over $1 million against Fuqua Industries, Inc. ("Fuqua") for the withdrawal of Fuqua's former subsidiary, Interstate Motor Freight System, Inc. ("Interstate") from the Fund. Alleging that Fuqua had spun off Interstate into a separate entity on November 1, 1980, in order to evade or avoid withdrawal liability, the Fund brought action in district court to collect this liability from Fuqua.[2] In accordance with MPPAA's mandatory dispute resolution process, *see* 29 U.S.C. § 1401, the district court remanded to arbitration the issue whether a principal purpose of the spinoff was to evade or avoid withdrawal liability.

The arbitrator held as an initial matter that the Fund, "as the moving party, has the burden of proof in the case," and that its determinations would not be presumed correct under section 4221(a)(3)(A) of ERISA, 29 U.S.C. § 1401(a)(3)(A). Pet. App. 71a. In reaching this conclusion, the arbitrator relied on *United Retail & Wholesale Employees, Teamsters Union Local No. 115, Pension Plan v. Yahn & McDonnell, Inc.*, 787 F.2d 128 (3d Cir. 1986), *aff'd by an equally divided court sub nom. PBGC v. Yahn & McDonnell, Inc.*, 481 U.S. 735 (1987), which held the statutory presumption unconstitutional.[3]

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[2] The spinoff occurred immediately after the passage of MPPAA on September 26, 1980, leading to a dispute over whether Fuqua officials were aware of the new statutory provisions on withdrawal liability at the time of the spinoff.

[3] In addition to the Ninth Circuit decision currently under review by the Court, *Board of Trustees of the Construction Laborers Pension Trust for Southern California v. Concrete*

Then, after holding four days of hearings and reviewing a record that included more than eight notebooks of documents and four depositions (*see* Pet. App. 9a, 46a), the arbitrator concluded that Fuqua's spinoff of Interstate "did not have as a principal purpose to evade or avoid withdrawal liability." Pet. App. 20a.

In the district court, the Fund moved for an order vacating the arbitration award, challenging numerous aspects of the arbitrator's decision. After examining each of the Fund's contentions in detail, the district court rejected them, enforced the arbitrator's decision, and dismissed the Fund's assessment of withdrawal liability against Fuqua. Pet. App. 3a-19a.

The Fund appealed to the Third Circuit, which affirmed the district court's decision in a judgment order. Pet. App. 1a-2a. The Petition for Certiorari followed.

Pipe & Products of California, Inc., No. 89-55854 (9th Cir. May 6, 1991) (per curiam), every other Court of Appeals that has addressed the issue has upheld the constitutionality of the presumption. *See Keith Fulton & Sons v. New England Teamsters & Trucking Indus. Pension Fund*, 762 F.2d 1137, 1140-43 (1st Cir. 1985) (en banc); *Washington Star Co. v. International Typographical Union Negotiated Pension Plan*, 729 F.2d 1502, 1511 (D.C. Cir. 1984); *Textile Workers Pension Fund v. Standard Dye & Finishing Co.*, 725 F.2d 843, 855 (2d Cir.), *cert. denied*, 467 U.S. 1259 (1984); *Republic Industries v. Teamsters Joint Council No. 83*, 718 F.2d 628, 639-41 (4th Cir. 1983), *cert. denied*, 467 U.S. 1259 (1984). *See also Board of Trustees v. Thompson Bldg. Materials*, 749 F.2d 1396, 1403-04 (9th Cir. 1984), *cert. denied*, 471 U.S. 1054 (1985).

ARGUMENT

I. RESOLUTION OF THE CONSTITUTIONAL ISSUE IS UNNECESSARY TO THE DISPOSITION OF THIS CASE.

From its earliest decisions to some of its most recent, the Court has made clear its unwillingness to rule on a constitutional question except in a factual setting that makes such decision necessary. *See, e.g., Pennell v. City of San Jose*, 485 U.S. 1, 10 (1988); *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445-46 (1988); *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 341, 347 (1936) (Brandeis, J., concurring); *Blair v. United States*, 250 U.S. 273, 279 (1919); *Siler v. Louisville & Nashville R. Co.*, 213 U.S. 175, 191 (1909). The "ordinary rule" is "that a federal court should not decide federal constitutional questions where a dispositive nonconstitutional ground is available." *Hagans v. Lavine*, 415 U.S. 528, 547 (1974).

The Petitioners ask the Court to address the constitutionality of the statutory presumption of correctness that MPPAA accords to certain determinations that pension plan sponsors make regarding withdrawal liability. *See* 29 U.S.C. § 1401(a)(3)(A).[4] Plainly, it would be desirable to resolve the split in the circuits on this issue. However, the Court should do so in a case where the issue is squarely

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[4] This section provides:

> For purposes of any proceeding under this section, any determination made by a plan sponsor under [29 U.S.C. §§ 1381 through 1399 and 1405] is presumed correct unless the party contesting the determination shows by a preponderance of the evidence that the determination was unreasonable or clearly erroneous.

and properly presented. In this case, it is not. An examination of the decisions below makes clear that even if the presumption were applied to the Fund's factual determinations, the outcome would be the same—the Fund's assessment against Fuqua would be dismissed.[5] Thus, because addressing the constitutional question is unnecessary to resolve the case and would not affect its outcome, the Court should decline review.

The presumption in section 1401(a)(3)(A) simply delineates the burden of proof in MPPAA arbitration proceedings. Thus, if the presumption applied in this case, the Fund's notice and demand for withdrawal liability would set forth its prima facie case that Fuqua had spun off Interstate with a purpose of evading or avoiding withdrawal liability. The burden then would shift to Fuqua to establish, by a preponderance of the evidence, that the Fund's determination is wrong. The Fund then would have to present evidence to rebut Fuqua's case. *See Washington Star Co. v. International Typographical Union Negotiated Pension Plan*, 729 F.2d at 1511.

In refuting the Fund's determination, Fuqua submitted testimony by five company officials that they knew nothing about the pendency or enactment of the new statutory provisions on withdrawal liability

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[5] The presumption applies only to the plan sponsor's *factual* determinations under the relevant provisions. On matters of statutory interpretation, the arbitrator makes an independent judgment, based on "applicable law, as embodied in statutes, regulations, court decisions, interpretations of the agencies charged with the enforcement of the Act, and other pertinent authorities." 29 C.F.R. § 2641.4(a)(1). To the extent that the Fund's determinations involved questions of law or mixed questions of law and fact, the presumption does not apply.

at the time they made the decision to spin off Interstate. *See* Pet. App. 49a-51a. In addition, Fuqua presented abundant evidence to the effect that the spinoff was undertaken, after careful analysis, for legitimate business reasons. *See* Pet. App. 58a-60a.[6]

The Fund's only response to Fuqua's evidence was to note that Fuqua's president did not testify. The arbitrator attached no weight to this point, noting that the Fund could have called him to testify, but did not. Pet. App. 51a. In short, the arbitrator found that the Fund simply had no specific evidence of any wrongful intent by Fuqua. *See* Pet. App. 60a ("These conflicting theories of the Fund illustrate the real problem of its case: *there is no evidence* to point to that withdrawal liability was the—or even a—reason it was necessary to spin off Interstate.") (emphasis added).[7]

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[6] The Fund asserted that the spinoff was hastily contrived and was contrary to Fuqua's "corporate culture" in that Fuqua ordinarily sold its unprofitable subsidiaries. Pet. App. 33a-36a. The record, however, included a study by Merrill Lynch and numerous internal memoranda of Fuqua officials documenting the relative advantages of a spinoff over a sale or restructuring of Interstate. Pet. App. 29a-30a, 51a-60a. Moreover, although the Fund asserted that Fuqua knew that Interstate could not survive as an independent company, a memorandum written by Fuqua's planning director to its president on August 14, 1980, showed otherwise. *See* Pet. App. 30a.

[7] As the arbitrator noted, the Fund's response to an interrogatory asking it to state the basis for its allegation that the purpose of the spinoff was to avoid withdrawal liability was:

> This information was based on knowledge of corporate planning and conduct in similar "spinoffs" of unprofitable operations by major corporations, the lack of any sup-

On this record, it is apparent that a ruling on the constitutionality of the presumption in section 1401 (a)(3)(A) would have no impact on the outcome of this case. Accordingly, the Court should not reach out to address it.

II. RESOLUTION OF THE CONSTITUTIONAL ISSUE WOULD HAVE NO EFFECT ON THE RIGHTS OF THE PARTIES.

It is well settled that Article III of the Constitution does not empower the federal courts "to decide questions that cannot affect the rights of litigants in the case before them." *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). As the Court recently reiterated, "a federal court has no authority . . . 'to declare principles or rules of law which cannot affect the matter in issue in the case before it.'" *Church of Scientology of California v. United States*, 113 S. Ct. 447, 449 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)). As demonstrated above, a ruling that the presumption in 29 U.S.C. § 1401 (a)(3)(A) is constitutional and should be applied in the instant case would not affect its outcome. Accordingly, the Court should decline to reach this question.

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porting justification for the spinoff other than debt avoidance[,] and examination of public reports on the financial situation of [Interstate] and Fuqua in the prospectus issued by [Interstate] and Fuqua in connection with the distribution of securities of Interstate and other public financial reports.

Pet. App. 46a.

CONCLUSION

Distilled to its essence, the Fund's contention is that the arbitrator's factual determinations were wrong. Based on the evidence presented and the inferences drawn from it, the Fund asserts that the arbitrator should have found Fuqua to be responsible for withdrawal liability. Even if the Fund is correct, its arguments do not raise any question of federal law, but rather, are thoroughly tied to the facts of this case, and thus hardly present "special and important reasons" for granting certiorari. Sup. Ct. R. 10.1. For all of the reasons stated above, PBGC respectfully urges the Court to deny certiorari in this case.

Respectfully submitted,

CAROL CONNOR FLOWE *
General Counsel
TERRENCE M. DENEEN
Associate General Counsel
JEFFREY B. COHEN
Deputy General Counsel
PAULA J. CONNELLY
Senior Counsel

PENSION BENEFIT GUARANTY CORPORATION
2020 K Street, N.W.
Washington, D.C. 20006
(202) 778-8820

*Counsel of Record

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